

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Prabhakar waghdare v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.5053/1993
under Article 226 of the
Constitution of India.

Date of Order : 8th September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Manoj Bhandari, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

A letter dated 27.9.1993 addressed to then Hon'ble the Chief Justice of this Court was treated as a writ petition and the same was admitted for hearing by an order dated 25.10.1993.

By letter dated 27.9.1993 the petitioner claimed for pension and other retiral benefits being a retired government servant of Government of Rajasthan.

A reply to the letter referred above was filed by the respondents stating therein that the petitioner in fact was not retired from services but was voluntarily retrenched from service w.e.f. 30.5.1988 and at the time of retrenchment a sum of Rs.61,830/- was paid to him, bifurcation of which is as under:-

1.Retrenchment Compensation	:	Rs.21475/-
2.Gratuity	:	Rs.21475/-
3.G.P.F.	:	Rs. 7661/-
4.C.P.F.	:	Rs.11219/-

Rs.61830/-

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Subsequently the petitioner also filed a rejoinder to the reply and also a written note placing necessary facts on record.

This Court by order dated 25.7.2005 directed the respondents to produce the original service book of the petitioner and also a copy of the order whereby the petitioner was taken on regular cadre as Mistri. In compliance of the order dated 25.7.2005 Shri Kulwant Singh, Executive Engineer, District Division, LMC, Garhi, produced the desired record before this Court. A photocopy of the service book, pertaining to

the petitioner and the order dated 30.4.1981 whereby his service was absorbed in regular cadre, is taken on record.

The factual matrix on basis of record referred above is that the petitioner at the first instance was appointed as workcharged Mistri on workcharged basis w.e.f. 2.8.1963. Permanent status was conferred to him under Rajasthan Workcharged Service Rules, 1964 w.e.f. 2.8.1973 by an order dated 3.10.1974. By an office order dated 30.4.1981 consequent upon creation of regular 38 posts for workcharged employees the service of the petitioner was absorbed on the post of Mistri w.e.f. 1.3.1979. The petitioner sought voluntary retirement from service w.e.f. 30.5.1988. Prior to it the petitioner submitted an option on 15.12.1981 accepting pensionary benefits after retirement. The pensionary benefits were not given to the petitioner after his retirement, therefore, he submitted number of representations to the respondents and looking to those representations provisional pension was allowed to him in the year 1990. The provisional pension so started too was stopped, hence petitioner approached this Court by way of submitting the letter dated 27.9.1993.

The respondents in their reply submitted that the petitioner in fact was not retired from service but was voluntarily retrenched in view of an agreement

arrived at between the employer and the representative trade union on 22.11.1984. The petitioner voluntarily accepted the retrenchment and all other pecuniary benefits arising out of that, therefore, he is not entitled for pensionary benefits as claimed.

Heard counsel for the parties.

The respondents in quite unequivocal terms stated that the petitioner at his own opted for voluntary retrenchment from service and, therefore, pensionary benefits were not allowed to him and for such agreement the respondents were having empowerment under an order dated 22.11.1984 (Anx.R/1).

I have examined the document dated 22.11.1984 which relates to the muster-roll/workcharged employees and not to the regular employees. The petitioner on being taken on regular cadre under the order dated 30.4.1981 w.e.f. 1.3.1979 seized to be a workcharged employee, as such the document Anx.R/1 dated 22.11.1984 could not be made applicable for him. The respondents, therefore, erroneously entered into the agreement with the petitioner with regard to voluntary retirement in pursuant to the document referred above. The petitioner being a regular government servant is entitled for pensionary benefits as then provided under Rajasthan Service Rules, 1951.

In view of it I am having no hesitation in holding that the respondents erroneously treated the petitioner an employee retrenched from service. The petitioner, therefore, declared entitled for getting pensionary benefits.

Accordingly this petition for writ is allowed. The respondents are directed to treat the petitioner retired from service w.e.f. 30.5.1988 and further to allow him all post retiral benefits including pension by taking into consideration 2.8.1963 as the date of his initial appointment. The petitioner shall be entitled for getting arrears accrued to him as a consequence of direction above and interest @ 10% per annum. The respondents may adjust the amount already paid to the petitioner by treating him an employee retrenched from service while making the payment of arrears to him.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.